

**ADVISORY COUNCIL**  
April 8, 2015 Meeting Minutes

**ADVISORY COUNCIL MEMBERS PRESENT**

Patrick Early, Chair  
Bill Freeman  
Thomas Hastings  
Bart Herriman  
Ross Williams

**NRC, DIVISION OF HEARINGS STAFF PRESENT**

Jennifer Kane

**DEPARTMENT OF NATURAL RESOURCES STAFF PRESENT**

Cameron Clark	Executive Office
John Davis	Executive Office
Chris Smith	Executive Office
Monique Riggs	Division of Water

**GUESTS PRESENT**

No guests attended the meeting.

**Call to Order**

Patrick Early, Chair, called the meeting to order at 10:00 a.m., EDT, at the Fort Harrison State Park Inn, 5830 North Post Road, Theodore Room, Indianapolis, Indiana. With the presence of five members, the Chair observed a quorum.

The Chair provided a brief update regarding the proposed amendments to 312 IAC 9-3-3(d), which would allow the use of a center-fire rifle to hunt deer during firearms season. “We had a really good meeting...in January, and there was a considerable amount of concern from this group about whether or not that was a good idea or not. I think that, just in general, whether it’s statistics or anything else, I think everybody kind of went along the same lines that you look at things, and what’s the upside. Does it expand opportunity? Does it bring a lot of new people to the sport? Is it something we need to do for biology? The consensus and the feedback that we received from the Division of Fish and Wildlife was it wasn’t really biological. I think everybody felt like it’s really not an increase in opportunity. It may increase the distance of the opportunity, but not necessarily the opportunity to hunt. I took the message from everyone present at the January meeting and conveyed it to the Natural Resources Commission. It was quite clear that it was unanimous from the members of the Advisory Council that there is concern about this. There had been a lot of feedback from the online comments about both pros and cons. It’s very difficult, but what you can always tell if it is extremely one-sided then you get a pretty good idea where everybody stands. In this situation there were a lot of fors and a lot of against. So I think we decided at the Commission meeting was to rather than rush into any

action, to go ahead and let the process run its course. The process running its course involves having public hearings.”

Chris Smith noted that three public hearings were held regarding the proposed rule package, one at located at Springmill State Park, the other at Fort Harrison State Park, and the last public hearing was held in Columbia City. He also noted that those present at the Springmill State Park were in favor of the proposed rule amendment and those attending the public hearing held in Columbia City were mostly against the proposed amendment to allow center-fire rifles. Smith said the public hearing held in Columbia City was the most heavily attended of the three public hearings.

The Chair noted said the Commission and the Department will assess the continued response to the rule proposal and “try to figure out at this point of time whether or not socially it is the right thing do, because it doesn’t make any difference from a fiscal standpoint, a biological standpoint...this is pretty much a social issue.” He said the Commission will be required to decide regarding the rule proposal. “On social issues, first of all if there is a pretty split group, what is compelling enough to force [the Commission] to make a change? The second issue is that everybody has to evaluate the potential upside and potential downside. Could it impact hunting? Could it hurt people’s perception of hunting? What does it do to DNR? There are just different questions. There is no overwhelming or compelling biological issue that is going to decide what happens.”

Bart Herriman observed, “It seems like in addition to social it’s also, to me, a public safety issue. I know that some representatives of DNR indicated that in other states there haven’t been a lot of injuries. But, I think, to me, it’s more than just social, it’s also public safety.”

The Chair agreed with Herriman’s statements. He noted that the proponents point out that statistically there is no difference in safety where rifles are allowed for deer hunting. “But statistically does it make any difference if some kid is standing at a bus stop and gets hit by a stray bullet, or if a car or a house gets hit...You’re accepting these unknowns as the downside. Is there a compelling enough upside to make you basically make a decision based upon what is less than a clear majority of what the sportsman wants.”

John Davis stated commented that safety may be a separate issue or it may be a component of the social issue. “I think there is another piece of that that is about DNR’s preserving and protecting hunting in a general way. But DNR and the perception of DNR, in a general way, kind of a reputation or a protection of our wholeness from unnecessary strife, or strife that causes us difficulties between our constituency groups.”

The Chair said that the Advisory Council and the Commission have tried to balance to try to make sure that all of the hunting and outdoor regulations are within the hands of DNR. He noted that some Commission members also voiced their concern regarding the rule proposal allowing the use of center-fire rifles during deer season.

Thomas Hastings noted that he did not attend the January meeting. He related an event that occurred in Morgan County that occurred about five years ago. “There was a guy that was in his

home out in the country, and his wife comes into the bedroom and he's feeling really bad, and he dies. The reason he dies is the bullet came through the house, hit him, and went through the owner's heart. Somebody was shooting rifles father away. I don't think they were going after deer. I think they were just practicing. They didn't intend to shoot him, but it killed the man." Hastings said the house was south of Martinsville, but Morgan County is not huge, but it's not an area high-powered rifle shooting is probably the thing to be doing there."

Cameron Clark, Director of the Department of Natural Resources, stated that with regard to the public safety issue, the data gathered from the surrounding states was put together by the DNR Division of Law Enforcement. "But, I think, if you polled them individually, those officers probably wouldn't be for it for public safety reasons...Statistics may not bare a public safety concern, but those involved in public safety aren't convinced."

Bill Freeman noted that he was unable to attend the January meeting, but has discussed the rule proposal with others. "I can see no upside to [the rule proposal] either. It doesn't seem like a reasonable thing to do so I would throw my support in with the Advisory Council members."

Director Clark noted that the Commission would consider the proposed rule amendment, among other amendments to 312 IAC 9, but "it was important that in spite of concerns of this panel and some other people on the Commission that it does get through the process...It's still a topic of great concern on both sides. It's probably important that we went through the process."

Herriman noted that the rule proposal was initiated through the petition for rule change process. "I think DNR is probably one of the few state agencies that has that platform for people to suggest rule making. I think it's a very democratic notion. I think it's a good idea." He then asked for clarification regarding the process of a petition for rule change.

Director Clark said that a petition for rule change is usually filed with the Commission. The Commission adopted a nonrule policy document that provides standards for the review and processing of petitions for rule change. The Commission forwards the petition to a DNR review committee, which is made up of staff from DNR divisions that may have interest in the petition. The DNR review committee reviews the merits of the petition and then makes recommendations to the Commission. He noted that in the past, the Commission and the DNR have received petitions for rule change to allow the use of rifles, and recently state legislators have shown some interest. He said the DNR decided it was an appropriate time to vet the issue.

John Davis said the DNR has another avenue to receive suggestions for rule change. He said the Division of Fish and Wildlife has an "open process" where an individual could suggest a rule amendment, such as changing seasons or bag limits or a gun change. Davis said the Division staff review the suggestions on their merits, and some are discarded and are not pursued, and others are discussed. "Sometimes though things are so relevant and so timely that we all feel that we should pull them out and plug them into the rule adoption process even if they weren't officially sent through the Commission. I think this one came from a citizen petition for rule change...DNR is not pushing rules, but trying to be democratic and let people have a say and try not to be superfluous with the Advisory Council and the Commission. Now we have the Governor watching us, too, to make sure we don't add any frivolous rules."

Freeman asked whether citizen suggestions and petitions are posted on the DNR's website.

Chris Smith said that when Fish and Wildlife conducts its biennial review of its governing rules, the DNR provides the public with avenues to submit rule amendment suggestions usually through the Internet and regular mail. The Division posts the results and suggestions on its website.

### **Reports of Deputies Director**

Chris Smith, Deputy Director of the Bureau of Resource Regulation, reported that the Division of Reclamation's Abandoned Mine Lands Program will begin a grouting project on a underground mine subsidence area that is located under US 40. "In the next few weeks they will be putting in grout and shoring up an old abandoned underground mine that's in an area that is prone" to subsidence. He noted that past projects have been completed under US 40 to protect the integrity of the road.

Smith said that there have been three additions to senior staff since January. He said Pete Johnston, a longtime employee, has accepted the Technical Assistant Director position in the Division of Reclamation. There have been two additions to the Division of Historic Preservation and Archaeology. Amy Johnson has accepted the position of lead Archaeologist, a position vacated by Rick Jones, who retired last year. Rachel Sharkey will be moving into Johnson's position, the Archaeological Records Section Coordinator.

Smith reported that the General Assembly will be ending its session at the end of this month. "It has been somewhat of a quiet year for us. I know that most of the bills that we have been watching have either made their way through or gone to the side, with the exception of the 'fenced deer bill,' which still has some movement to it. It passed out of committee...6-3, and went up for a second reading amendment yesterday...It will be available for a vote from the full Senate on Thursday. It's going to be close by the sound of it."

The Chair asked Smith to clarify the bill's intent.

Smith said that, in general, the bill would grandfather the four existing preserves. The bill allows for the issuance of additional permits for areas that are 125 contiguous acres, increased fencing height from eight feet to ten feet for new licenses. "In an attempt, I think, to address the CWD issue, the bill restricts all deer on the preserves to being born and raised in Indiana— nothing that could be imported and put on the shooting preserves. Weapons and bag limits are open. Funding is going to be an issue on our part. \$3,000 for initial permit fee, which is split between DNR and BOAH. DNR is estimating its annual inspection rate and the paperwork processing being about \$1,800, so that already puts us short. And then every year after, permit renewal fee is \$300, which really puts us short."

Herriman asked whether the Department sponsored the bill or is supporting the bill.

Smith said Representative Eberhart, Shelbyville, is the House sponsor, and Senator Glick, Steuben County, is the Senate sponsor. “The bill still has some problems for us.”

Smith also reported that he attended the Brookville Reservoir walleye collection brood stock for 2016. “They are about halfway through their 35 million eggs collected. A lot of fish, but not a lot of big fish yet.” He explained that a series of eight gill nets are set along the dam, and the fish are then collected. Smith said the fish are returned to Brookville Reservoir after the eggs are harvested and fertilized. The fertilized eggs are then shipped to Cikana Fish Hatchery, Martinsville, where they will be raised to fingerling or brood stock size and released throughout the state.

John Davis, Deputy Director of the Bureau of Lands and Cultural Resources, said the DNR issued a Request for Proposal for a partner to build an inn at Potato Creek State Park located south of South Bend. The deadline was March 31 and the Department has not received a response. Davis said the Department would wait to see whether the budget contains money for a state park inn. He also reported that a Brown County State Park cabin burned, but no one was injured. He noted that the cabin was not totally destroyed. “We’re getting ready to rebuild and inspecting all the other cabins to make sure that we don’t have any other problems.

Davis said the Department is “in the midst of the Dunes Pavilion conversation. We have a developer we believe can put a restaurant back in the Dunes Pavilion and to involve constructing an adjacent building, which has been approved environmentally and historic preservation-wise in the way it fits with the other building.” He said the new construction will be placed on existing concrete, and the Pavilion itself has been gutted.

### **Approval of minutes of meeting held on January 14, 2015**

Bill Freeman moved to approve the minutes of the meeting held January 14, 2015. Bart Herriman seconded the motion. Upon a voice vote, the motion carried.

### **Consideration of Hearing Officer Report in preparation for Advisory Council summarizing public meetings and making recommendations to the Natural Resources Commission regarding request by Brook Hill Golf Club, Inc. for a Water Sale Contract from Brookville Lake under IC 14-25-2 and 312 IAC 6.3; Administrative Cause No. 15-041V**

Monique Riggs, Environmental Scientist with the Division of Water, presented this item. She provided Advisory Council members with a list of the eight existing water supply contracts with the Department. She also provided a brief review of the water supply contract review process. The state of Indiana is authorized under IC 14-25-2 to sell water on a unit pricing basis or as a low flow stream augmentation from water supply storage and reservoir impoundments or portions of those impoundments that were financed by the state. The Department’s Division of Water is the administrator for these types of contracts. IC 14-25-2 and 312 IAC 6.3 require a written application for a contract request be submitted to the Division of Water. The Advisory Council delegated to the director of the Division of Water to appointment of an hearing officer to

conduct the public meetings and to draft a report regarding the contract request. The hearing officer subsequently drafts a summary of the public meeting and submits the report for Advisory Council review and approval. The hearing officer's report is then reviewed by the Natural Resources Commission ("Commission") during one of its regularly scheduled meetings.

Riggs explained that the Brookville Golf Club, in Brookville, requested a new contract to continue its seasonal water purchase from Brookville Lake to irrigate its 18-hole golf course. The Golf Club has withdrawn water under contract from the State beginning with the first contract beginning in 1994, which has since been renewed in 2004. The instant contract is the Golf Club's second contract renewal for the same ten year term. Riggs noted that the ten year term is a standard for all golf courses that have contracts to withdraw water from reservoirs. She said the Commission may enter into contracts to sell water on a statutorily set unit price basis, which is \$33 per million gallons. The contract renewal would allow the Golf Club to withdraw 25 million gallons annually, which is the same maximum withdraw as the previous two contracts. Riggs said the maximum revenue received through the contract is \$825 with the actual annual revenue over ten seasons ranging anywhere from \$100 to \$820, averaging around \$350 to \$500 per year.

Riggs said Brookville Lake's firm yield, the total volume of water that is available for sale, is approximately 82 million gallons per day. The average daily use is calculated from the total usage over the number of days in an irrigation season, which is not necessarily the entire year, but typically a maximum of 180 over the hottest days of the summer. She explained that the Department has one other contract to sell water of Brookville Lake with Brookville Enhancement Partners, which operates the Harbor Lakes Golf Court. The Enhancement Partners contract allows for a maximum annual withdraw of 35 million gallons per year. Riggs noted that the combined summer usage by both contracts is estimated to be less than one million gallons per day at the maximum withdraw rates, and total amount committed with both contracts is less than 1% of the actual storage volume that available in Brookville Lake.

Riggs said the contract renewal will be effective for ten years from the date of contract approval. She noted that the contract does allow the client to seek approval, through the Commission, for increased withdraw amounts. She said the Division of Water does not anticipate any negative impacts from this water supply contract and recommends approval of the approval.

The Chair asked Riggs to explain the process of determining the total volume of water the state of Indiana is able to sell through contract.

Riggs explained that the state may sell water from a reservoir in which the state has partially or fully financed the construction of that reservoir. Regarding Brookville Lake, she said the volume of water that may be sold is between elevation 713 and elevation 740 (89,300 acre feet or 82 million gallons per day). Each reservoir has a particular set of elevations that is allotted to the state for sale. The flood control storage component, which varies by time of year, is above the state's volume allotment. The reservoir pool elevation is determined by the U.S. Army Corps of Engineer who operates the outlet works on the reservoir.

Bart Herriman asked whether the contract includes a forced reserve clause in case of water emergency.

Riggs said the state has protections should water in the reservoir become unavailable due to drought conditions or some other emergency situation. The state reserves the right to cut off water supply. She explained that the statute that amended the governing statute to require public input on a contract request also set for the first time in Indiana priorities for water uses. The first priority is domestic water supply, which “is always priority one, then goes down the line—health and safety, industry, irrigation purposes, and golf courses are at the bottom.” Riggs noted that golf courses are not required to have a contingency plan in place should water become unavailable, because golf courses will be “the first to be cutoff. They are aware of that.”

Herriman then asked whether there was an issue regarding fertilizer runoff entering the reservoir system. Riggs said the contract does not address nonpoint source pollution. The client would be required to meet any environmental standards through the Indiana Department of Environmental Management or any other agency.

Freeman asked regarding when the statutory price unit of \$33 was enacted. Riggs said the \$33 price unit was set in the mid-1990s as the standard for these types of withdrawal contracts. “Prior to the set standard, there was a sliding scale based on usage.” She noted that the \$33 unit price is set for the life of the contract.

Riggs noted that the Department held two public meetings, one located in Liberty and the other in Brookville. By statute, the Department is to conduct a public meeting in every county in which the reservoir exists, and if the water is used for public water supply, every county where the water is ultimately used. She noted that two representatives from the Golf Club and a representative from the Corps attended the public meetings. Riggs recommended the Advisory Council to approve the hearing officer’s report and the make recommendation to the Commission for approval of the contract.

Bill Freeman moved to approve the hearing officer’s report, as the Advisory Council’s report to the Commission under 312 IAC 6.3-3-4, and that the Advisory Council recommend the Commission enter a contract with Brook Hill Golf Course, under IC 14-25-2 and 312 IAC 6.3, consistent with the hearing officer’s report. Ross Williams seconded the motion. Upon a voice vote, the motion carried.

## **Adjournment**

The meeting adjourned at 10:50 a.m., EDT.